

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

KALIN GUTHRIDGE,

Plaintiff,

vs.

JOHNSON & JOHNSON CORP. and  
ETHICON, INC.,

Defendants.

CV 22-145-BLG-SPW

ORDER ADOPTING  
FINDINGS AND  
RECOMMENDATIONS

Before the Court are United States Magistrate Judge Timothy Cavan's Findings and Recommendations, filed September 22, 2023. (Doc. 31). Judge Cavan recommended the Court grant Defendants Johnson & Johnson's and Ethicon, Inc.'s Motion to Dismiss as to Counts III and IV (Doc. 22), without prejudice and with leave to amend.

The parties were required to file written objections within 14 days of the filing of Judge Cavan's Findings and Recommendations. 28 U.S.C. § 636(b)(1). Neither party objected to the Findings and Recommendations, and so waived their right to de novo review of the record. *See* 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the

Court is left with a “definite and firm conviction that a mistake has been committed.” *Government of Guam v. Guerrero*, 11 F.4th 1052, 1059 (9th Cir. 2021) (quoting *C.I.R. v. Duberstein*, 363 U.S. 278, 291 (1960)). After reviewing the Findings and Recommendations, this Court does not find that Judge Cavan committed clear error.

Accordingly, IT IS HEREBY ORDERED:

1. Judge Cavan’s Findings and Recommendations (Doc. 31) are ADOPTED IN FULL.


2. Defendants Johnson & Johnson’s and Ethicon, Inc’s Motion to Dismiss under Federal Rule of Civil Procedure 9 (Doc. 22) is GRANTED as follows:

a. Count III is dismissed without prejudice and with leave to amend

b. Count IV is dismissed without prejudice and with leave to amend.

3. If Guthridge wishes to proceed on Counts III and IV, she must file an amended complaint by November 1, 2023.

DATED this 11<sup>th</sup> day of October, 2023.

  
SUSAN P. WATTERS  
United States District Judge